

REMARKS

I. Status of Claims

Claims 1-5, and 7-23 are pending. Without prejudice or disclaimer, claims 1 and 23 are amended herein to incorporate the subject matter recited in claim 6, now cancelled. Therefore, no new matter is presented.

II. Rejection under 35 U.S.C. § 103(a)

The Office maintains the rejection of claims 1-23 under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent No. 6,521,219 to Hirata ("Hirata"), in view of U.S. Patent No. 6,076,530 to Braidia-Valerio et al. ("Braidia-Valerio") and U.S. Patent No. 6,303,110 to Maubru et al. ("Maubru") for the reasons set forth at pages 2-5 of the Final Office Action. According to the Office, "Braidia-Valerio et al. specifically teach that application of the particular ceramides taught treats and protects hair fibers from damage that may occur during mechanical or chemical treatments," and therefore, "[t]herefore, one of ordinary skill in the art at the time the invention was made would have been motivated to apply the ceramides of Braidia-Valerio et al. to the method of Hirata to treat and protect hair during subsequent mechanical and/or chemical treatments." Final Office Action at 3. Applicants respectfully disagree and traverse the rejection.

"A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." M.P.E.P. § 2141.03 (VI) (citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). Here, Hirata and Braidia-Valerio, both teach away from the claims as-amended.

For example, claim 1, as-amended, now recites a pre-drying step after the application of the ceramide composition, but before the application of the iron at a temperature of at least 60°C. Thus, when heat is applied to hair at a temperature of at least 60 °C, the hair is dry. In contrast, both Hirata and Braidà-Valerio require moisture to be present on the hair at the time the hair is treated with an elevated temperature.

Hirata expressly teaches a method of restoring damaged hair, wherein the amino acids/peptides applied to the hair are allowed to penetrate into the cortex by “openings generated in the cuticles during the pressurized steam treatment.” See *id.* at col. 2, ll. 23-31. Thus, *Hirata* requires moisture, for example in the form of steam, in order for the amino acids/peptides to be effective. Indeed, Hirata teaches that “[i]f the moisture content of hair is too low, insufficient steam is produced when the hair is subjected to the heat compressing process, and hair may be damaged by heat.” *Id.* at col. 6, ll. 13-15 (emphasis added). Therefore, Hirata’s requirement for the hair to have sufficient moisture content prior to heating amounts to a teaching away of the present claims, as-amended, which recite that the hair is dried prior to heating to a temperature of at least 60 °C.

Similarly, Braidà-Valerio requires steam for the composition containing at least one amide compound (“steam on human keratinous fibers treated beforehand with amides which have at least one fatty chain . . . improve the binding of the amides to hair.”). *Id.* at col. 1, ll. 31-39; see *also* Examples 1-3, and claim 1. Therefore, because Braidà-Valerio requires moisture (i.e., steam) in order for the composition to be effective, Braidà-Valerio also teaches away from the present claims, as-amended, which recite that the hair is dried prior to heating to a temperature of at least 60 °C.

Maubru is only relied upon for its disclosure of the details of a permanent reshaping process (see Office Action, August 29, 2007), and therefore does not remedy the deficiencies of Hirata and Braida-Valerio.

Based on the Supreme Court's decision in *KSR*, the Office announced seven exemplary rationales that may support a conclusion of obviousness. M.P.E.P. § 2143. All of these bases for obviousness require that one of ordinary skill in the art, without knowing anything of the claimed invention, would not only have a reason to produce that invention, but also would have a reasonable expectation of success and achieve predictable results. As shown above, in the instant case, the art at the time of the invention taught away from the claimed invention, and therefore one of ordinary skill in the art would have had no reason to produce the invention, and, even if they tried, would have had no reasonable expectation of predictable results.

For at least those reasons, the Office fails to establish a *prima facie* case of obviousness based on the cited references of Hirata, Braida-Valerio, and Maubru. To that end, Applicants respectfully request that the Office withdraw the rejection.

III. Conclusion

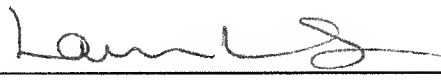
In view of the foregoing amendments and remarks , Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account 06-0916.

Respectfully submitted,

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